

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 306 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and  
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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KAMAL KESHU BAVRI

Versus

STATE OF GUJARAT

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Appearance:

MR PM VYAS for appellant

Mr.P.B.Bhatt, learned Addl.P.P., for Respondent No. 1

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CORAM : MR.JUSTICE M.R.CALLA and  
MISS JUSTICE R.M.DOSHIT

Date of decision: 24/04/98

ORAL JUDGEMENT (Per Calla,J)

1. This Criminal Appeal is directed against the judgment and order of conviction and sentence passed against the present appellant by the Addl. Sessions Judge, Banaskantha at Palanpur in Sessions Case No.149/88 dated 29.3.90 whereby the present appellant has been convicted for the offences punishable under Sections 147,

148 and 302 of the I.P.C. and has been sentenced to six months' R.I. for the offence under S.147 IPC, six months' R.I. for the offence under S.148 IPC and life imprisonment for the offence under S.302 IPC. Two other accused persons, namely, Ranchhod Balram Bavri and Bachumiya Musamiya Baloch have been convicted for the offences punishable under S.147 and S.326 read with S.149 of the I.P.C. and each of these two accused were sentenced to six months' R.I. for the offence under S.147 and 2 Years R.I. for the offence under S.326 read with S.149 of the I.P.C. There were two more accused persons in this case, namely, Kalu Swarupla Bavri and Suraj Balram Bavri, but they are absconding since the time of trial and till today and, therefore, the present appellant and Ranchhod faced the trial in Sessions Case No.149/88 and Bachumiya faced the trial in Sessions Case No.150/88 before the Addl.Sessions Judge, Banaskantha at Palanpur. Learned Addl. P.P. has pointed out that initially even accused Bachumiya had absconded and later on he had surrendered before the Jamnagar Police and, therefore, Sessions Case No.150/88 was taken up separately against him. However, both the Sessions Case Nos. 149/88 and 150/88 have been decided by common judgment and order dated 29.3.90 by the Addl. Sessions Judge, Banaskantha at Palanpur.

2. There is no appeal on behalf of Ranchhod and Bachumiya while each of them were convicted and sentenced as above. The present Appeal has been filed on behalf of the present appellant, who is the main accused and who has been convicted and sentenced as above i.e. six months' R.I. for the offence punishable under S.147, six months' R.I. for the offence punishable under S.148 and life imprisonment for the offence punishable under S.302 IPC and the sentences have been ordered to run concurrently.

3. We are, therefore, concerned with the case with regard to the present appellant only and, therefore, we will be making pointed reference of evidence with regard to the present appellant only.

4. The case of the prosecution is that on 23.6.88 an incident took place in the Dera (Palanpur) at Gobri Road at about 3.30 P.M. in the afternoon. With regard to this incident, one Dhanuben, wife of Arjan Bharatri, filed the complaint at the Police Station, Palanpur City to the effect that she used to live with her husband and children in the Dera of Balram Mukhi at Gobri Road, Palanpur. Her mother in law had already expired and her father in law Bharatri was also living with them. She

has stated that Bavri Kamal Keshu, Bachumiya, Kallu Swarupla, Ranchhod Balram and Suraj Balram were also living in this Dera and they had gone to see a movie at about 12.30 in the afternoon after taking their meals. At about 3.30 P.M. they returned from the movie to the Dera and at that time her husband Arjan Bharatri, Murari Bharatri, Lakshmi and Shamlal Bharatri were there and she was preparing the food (Rotla). Five accused persons, as named above, came to the Chhapra in which she was living and Bachumiya, who was in a very serious mood, started abusing her husband Arjan, who was sitting to take his food (Rotla); while hurling vulgar abuses that "how you are sitting to eat, you just come on the side so as to be cut by Dharia". While Bachumiya abused and told the words, as above, the other accused persons made Arjan to stand up and all the five accused persons took Arjan from the Chhapra and accused Kamal Keshu caused a Dharia injury on the right side of the neck of her husband Arjan, Bachumiya gave blows by hand and feet and Kalu Swarupla hit at the back of Arjan by an iron rod, Bavri Ranchhod gave beating to Arjanbhai by Tavitha (Iron rod for digging the sand with a wooden handle), Suraj Balram hit at the back of Arjan by a stick and at that time because of the shouts Murari, Shamlal etc. came to the rescue and thereupon five accused persons ran away. She reported that because of the injuries on the neck and nose the dead body of her husband was blooded. She has further reported that these five persons, who had come with Dharia, Tavitha, stick, iron rod etc. had told her husband that he alongwith his family members should leave this Dera and go somewhere else and he will not be allowed to stay in this Dera and killed her husband. Immediately, thereafter, she disclosed to the Police Inspector, Palanpur City, who had recorded the complaint, that by mistake she had stated that her husband had sustained the Dharia injury on the right side of the neck but in fact her husband had been injured on the left side and further that Bachumiya had married a Bavri lady and, therefore, he was living in this Dera although he was a Mohammedan. On the basis of this report, the case was registered and the Police made the investigation, as has been detailed out in the evidence of P.W.10 - Sajjansinnh Pratapsinh Bhati in his statement Exh.30 at page 78 of the paper book. On the basis of the result of the investigation, Chalan was filed and the appellant and the two other accused persons, as mentioned in the earlier part of the order, had faced the trial.

5. There are three eye witnesses. P.W.1 Exh.8 at page 28 of the paper book is Dhanuben, who is the author of the FIR and wife of deceased Arjan. She had

categorically named the five accused persons in the complaint as well as in the statement and while describing the role of each of the five accused persons, she has clearly stated with regard to present appellant that he had caused the injury on the left side of the neck of her husband with Dharia, she raised alarm and Shamlal etc. had also come on the spot. The deceased was wearing a lungi at the time of incident. When the assault was made upon him, lungi had slipped away. We have gone through her examination-in-chief as well as cross-examination and we do not find any reason to disbelieve her version. P.W. 3 Gangaben, who is a child witness of 10 years of age, in her deposition Exh.14 at page 49 has also supported the version of the prosecution, has named five accused persons and has stated that her brother was dragged by the accused persons to the place near the house of Hanuman Raju and while describing the role of each of the accused persons and the arms used by them, she has clearly stated that present appellant had caused an injury on the left side of the neck of deceased Arjanbhai. She has also been subjected to detailed cross-examination but her testimony has remained untrammelled. Third witness is P.W. 4 Exh.16 at page 54 of the paper book, namely, Shamlal, who is the brother of the deceased. He has also named all the five accused persons and has also narrated the role of each of them. With regard to the present appellant, he has also supported the case of the prosecution and has deposed that the present appellant had caused an injury on the left side of the neck of deceased Arjan by Dharia and the defence has failed to dislodge this witness also.

6. Thus, the oral evidence has supported the case of the prosecution. The injury on the left side of the neck sustained by the deceased Arjan proved to be fatal and the same is also supported by medical evidence through P.W.2 - Jaswantsinh Exh.12 at page 39 of the paper book. He has proved the post mortem note Exh.13 and had described two injuries. Injury No.1 is about 15 cm. incised wound on the left side of the neck and the same is oblique in direction. Injury No.2 has been described as all the muscles, vessels and nerves were cut on left side of neck (lower neck) and has given out that shock and haemorrhage due to the injury, as aforesaid, received by him, has been the cause of death. He has given out that such an injury could be caused by the weapon like Dharia and the injuries sustained by the deceased were sufficient in the normal course to cause the death and has also given out that the nose and ear of the body of the deceased were blood stained. Thus the medical evidence also corroborates the case of the prosecution.

7. P.W.10 Sajjansinh in his deposition Exh.30 page 78 has given the details of the investigation made by him. The inquest report is at Exh.18 at page 60. P.W. 5 is the Panch witness of the inquest report. P.W.7 (Exh.24 at page 69 - Kutbuddin Fatehmohmad) is the Panch witness of the recovery of Dharia and Exh.25 is the panchanama of the recovery of Dharia. He has categorically stated that the Dharia was produced by the accused i.e. present appellant. Thus, the oral evidence, medical evidence as also the recovery of the weapon of the offence fully support the prosecution case.

8. The learned counsel for the appellant submitted that the three eye witnesses are all interested witnesses being wife, sister and brother of the deceased and he also pointed out certain contradictions and submitted that in the F.I.R. the wife of the deceased - P.W.1 had stated that the injury had been caused on the right side of the neck and in the statement before the Court she has stated that the injury was caused on the left side of the neck and the injury had also been found on the left side of the neck. It is the settled law that witnesses cannot be disbelieved on the ground of being interested witness as relatives of the deceased, if their testimony is otherwise reliable. In the facts of the present case, we find that there is no inconsistency in the version of the three eye witnesses i.e. P.W.1, P.W.3 and P.W.4. The contradictions, which have been pointed out are not such material contradictions so as to render the entire story to be unbelievable. The fact that P.W.1 while filing the complaint had stated before the police that the injury had been caused on the right side of the neck of the deceased was a simple case of mistake and the same had also been explained by her immediately after the complaint was recorded and to that effect the endorsement is also there on the complaint Exh.9 page 35 and 36 and she has also explained before the Court in her deposition that it was by mistake that she had first stated before the police that it was on the right side of the neck as at that time she was under great tension because of the death of her husband. Be that as it may, the fact remains that she has corrected this mistake and other witnesses have also stated that the injury was on the left side and the evidence of the Doctor and post mortem report also shows that the injury was on the left side of the neck. It is, therefore, not such a serious matter on the basis of which the prosecution story can be disbelieved.

9. The learned counsel for the appellant has also submitted that it was a case of sudden fight, but we do not find any material on record to support this argument raised by the learned counsel for the appellant. Witnesses have deposed that all the five accused persons came together with arms in the Dera on their return from the movie, vulgar abuses were hurled against the deceased, who was sitting for his meals, he was forcibly dragged and was done to death by the use of weapon like Dharia by the present appellant. We do not find any reason to interfere with the order of conviction and sentence recorded by the learned Add. Sessions Judge against the present appellant. The conviction and sentence awarded by the trial court is sustained. There is no merit in the Appeal and same is hereby dismissed.